stockholders for the debts of a certain class of corporations this would not make the corporations any less entities. And there seems no good reason why an unincorporated association should not be regarded as just this sort of an entity. If the association is regarded as an entity, certain difficulties are avoided, which are presented if the obligation is treated as an ordinary joint obligation. Under the latter view, for instance, if one of the members of the association were a nonresident of the state in which judgment was given, and if he had not been served with process within the state, the entry of judgment against the association would be void, in accordance with the interpretation of the Fourteenth Amendment, laid down in *Pennoyer* v. *Neff*.[20] Execution could not even be levied upon joint property under such a void judgment. Of course, the plaintiff might reach the property by an action *quasi in rem*, but there are advantages connected with a personal judgment for which a judgment *in rem* would hardly be an adequate substitute. As a practical matter, a voluntary association does act as a unit, and it would appear that the liability ought to be primarily that of the unit. To the man in the street who deals with a labor union or a club, there is no difference apparent between the conduct of that organization, unincorporated, and the conduct of a similar incorporated association. Nor is any difference apparent to a member. Affairs are managed in quite the same fashion: business is transacted in the association name: the entity in the world of things is quite as definite. It seems, too, that the view of these associations which confirms the popular notion of them is at least as much in harmony with the language of these statutes as the procedural view. Perhaps it would be possible to recognize such voluntary societies as entities, even where there is no statute. In *Simpson* v. *Grand International Brotherhood of Locomotive Engineers*, an interesting recent case, the West Virginia court has refused to go this far.[21] At any rate, the statutes afford a desirable opportunity to make the law accord with ordinary thought, and, at the same time, to lessen the divergence between the treatment of organizations substantially similar.

ADOPTION OF ADMIRALTY RULES BY COMMON-LAW COURTS. — The United States Supreme Court has recently held that in personal actions for damages due to the negligence of shipowners, the state common-law courts must adopt the admiralty rule,[1] which denies compensation for consequential damages.[2] The question is whether this is in accordance with the intent of the Constitution and the former apparent attitude of the court, which has said that the "legislation of a State, not directed against commerce or any of its regulations, but relating to rights, duties, and liabilities of citizens, and only indirectly and remotely affecting

[20] 95 U. S. 714, 733 (1878). See also Blessing *v.* McLinden, 81 N. J. L. 379, 79 Atl. 347 (1911).

[21] 98 S. E. 580 (W. Va. 1919). See RECENT CASES, *infra*, p. 325.

[1] Chelentis *v.* Luckenbach S. S. Co., 247 U. S. 372 (1918).

[2] Laws of Oleron, Arts. VI–VII; Laws of Hanseatic Towns, Arts. XXXIX–XL; Laws of Wisby, Arts. XVIII–XVIV; Marine Ordinances of Louis XIV, Bk. III, Title IV, Art. XI. See also The City of Alexandria, 17 Fed. 390 (1883).

operations of commerce, is of obligatory force on citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or inter-state, or in any other pursuit." [3]

The constitutional provision extending the federal judicial power to all cases of admiralty and maritime jurisdiction,[4] and subsequent statutes saving to suitors a common-law remedy, where that law is able to give it,[5] do not create a maritime code, but vest in federal courts the exclusive right to adjudicate those suits and controversies which in 1789 were within state admiralty jurisdiction.[6] These suits are distinguished from common-law actions in that "the vessel is itself seized and impleaded as the defendant and is judged and sentenced accordingly," whereas by the common-law process "property is reached only through a personal defendant and then only to the extent of his title." [7] While common-law judgments could not bind parties outside the jurisdiction of the state courts, suits peculiar to admiralty might necessarily affect adversely the interests of such persons. This fact justifies the interpretation that the Constitution, to secure an impartial administration of justice, vests the federal courts with exclusive jurisdiction over only those suits which are peculiar to admiralty.[8]

On this assumption the Supreme Court held that a state court may entertain a bill in equity to enforce a lien on a raft, dependent on possession, for towage charges.[9] In such a case the lien is granted by the common law, and a sale in enforcement thereof would pass the property subject to prior equities and titles, thereby not affecting the interests of persons not before the court. So also a right of recovery, granted by state statute, for a wrongful death within its territorial waters is enforceable in a personal action in the local common-law courts.[10] Nor is a statute allowing attachment of a ship as an incident to a personal action in the state courts invalid.[11] But when a state attempts to authorize its courts to adjudicate suits against the ship itself, which shall bind all parties, whether before the court or not, the statute is unconstitutional.[12]

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[3] Sherlock *v.* Alling, 93 U. S. 99, 104. "State statutes, if applicable to the case, constitute the rules of decision in common-law actions in Circuit Courts as well as State courts, but the rules of pleading, practice, and of evidence in the admiralty courts are regulated by the admiralty law as ultimately expounded by the decisions of this court." American Steamboat Co. *v.* Chase, 16 Wall. (U. S.) 522, 534 (1872).

[4] Art. III, Sec. 2.

[5] 1 STAT. AT L. 77; UNITED STATES JUDICIAL CODE, § 256; COMP. STAT., 1918, § 1233.

[6] "The general system of maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted, was most certainly intended and referred to when it was declared in that instrument that the judicial power of the United States shall extend 'to all cases of admiralty and maritime jurisdiction.'" The Lottawanna, 21 Wall. (U. S.) 558, 574 (1874). See also Leon *v.* Galceran, 11 Wall. (U. S.) 185, 188 (1870).

[7] The Moses Taylor, 4 Wall. (U. S.) 411, 427 (1866). The doctrine is restated in Rounds *v.* Cloverport Foundry and Machine Company, 237 U. S. 303, 306 (1914).

[8] STORY, "COMMENTARIES," § 1664.

[9] Knapp, Stout, & Co. *v.* McCaffrey, 177 U. S. 638 (1899).

[10] American Steamboat Co. *v.* Chase, 16 Wall. (U. S.) 522 (1872).

[11] Leon *v.* Galceran, *supra;* Rounds *v.* Cloverport Foundry & Machine Co., *supra.*

[12] The Moses Taylor, *supra;* The Belfast, 7 Wall. (U. S.) 624 (1868).

The federal courts have recognized that the admiralty law is incomplete, and that it must sometimes draw on the municipal law for guiding principles.[13] Not only is a state statute allowing recovery for wrongful death on navigable waters enforceable by a libel in the federal admiralty courts,[14] but also a state statute giving a materialman's lien on a domestic ship is enforceable by a libel *in rem*.[15] In the former case state courts have concurrent jurisdiction,[16] but in the latter they have none at all.[17] The fellow-servant rule, which admiralty adopted,[18] is of common-law origin.[19] While the admiralty rule differs from that of common law as to the effect of contributory negligence on the right of recovery,[20] in libels under Lord Campbell's Acts, admiralty follows the common-law rule embodied by these acts in that the personal representative of the deceased may maintain an action only if the deceased could have brought an action had he lived.[21]

The Supreme Court followed these principles until the passage of Workmen's Compensation Acts. Some of the state and United States district courts held that these acts gave a common-law remedy within the meaning of the saving clause,[22] but others held the contrary, either on the ground that the maritime law as to injuries governed the seaman's contract,[23] or else that the acts were unconstitutional in that the employers were subjected to double liability, once under the act and once in admiralty.[24] The Supreme Court upheld the latter decisions, holding also that even in the absence of congressional legislation, states may not legislate on maritime matters as to which uniformity is essential.[25] In thus extending a rule which had previously been applied only to in-

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[13] "The general body of the (maritime) law as regards the ordinary fundamental rights of persons and property, whether on sea or land, is . . . derived from the constitutional order of the State, that is, from the municipal law which courts of admiralty to a considerable extent must necessarily adopt and follow, subject only to the modifications which the special characteristics of the law of the sea impose on maritime subjects." The City of Norwalk, 55 Fed. 98, 107 (1893). See also Sherlock *v.* Alling, *supra*, 104.

[14] The Hamilton, 207 U. S. 398 (1907). Thompson Towing & Wrecking Association *v.* McGregor, 207 Fed. 209 (1913).

[15] The Glide, 167 U. S. 606 (1896).

[16] American Steamboat Co. *v.* Chase, *supra*.

[17] The Glide, *supra*.

[18] *Olson* v. *Oregon Co.*, 96 Fed. 109 (1899).

[19] Priestly *v.* Fowler, 3 M. & W. 1, 6 (1837); Farwell *v.* Boston & Worcester Railroad Corporation, 4 Metc. (Mass.) 49 (1842).

[20] The Max Morris, 137 U. S. 1 (1890).

[21] Robinson *v.* Detroit & C. Steam Navigation Co., 73 Fed. 883 (1896); Gretschmann *v.* Fix, 189 Fed. 716 (1911); Monongahela River Consolidated Coal & Coke Co. *v.* Schinnerer, 196 Fed. 375 (1912).

[22] Lindstrom *v.* Mutual S. S. Co. 32 Minn. 328, 156 N. W. 669 (1916); North Pacific S. S. Co. *v.* Industrial Acc. Commission of California, 174 Cal. 346, 163 Pac. 199 (1917); Kennerson *v.* Thames Towboat Co., 89 Conn. 367, 94 Atl. 372 (1915); Berton *v.* Tietjen & Lang Dry Dock Co., 219 Fed. 763 (1915); Keithley *v.* North Pacific S. S. Co., 232 Fed. 255 (1916).

[23] Schuede *v.* Zenith S. S. Co., 216 Fed. 566 (1914).

[24] State *v.* Doggett, 87 Wash. 253, 151 Pac. 648 (1915). The argument of the court is refuted by the fact that the substitution of a statutory for a common-law liability no more subjects the employer to a double liability than he was formerly subjected, when the seaman could sue either at common law or in admiralty.

[25] So. Pacific S. S. Co. *v.* Jensen, 244 U. S. 205 (1917).

terstate commerce,[26] the fact seems to have been overlooked that while the Constitution expressly gives Congress the right to regulate interstate commerce,[27] it merely vests federal courts with jurisdiction over admiralty and maritime causes.[28] When the state courts in suits by seamen are compelled to adopt the admiralty rules, there can be no recovery for consequential damages. As a matter of substantive law, the justice of this result seems questionable.

CONSIDERATION IN CONVEYANCES BETWEEN HUSBAND AND WIFE IN FRAUD OF CREDITORS. — The marriage relationship lends itself conveniently as a cloak for the fraudulent concealment of property, which a hard-pressed debtor seeks to place beyond the reach of his creditors. Hence, transfers from husband to wife, whenever creditors are involved, are always subjected to the closest scrutiny by the courts, to assure against fraudulent motive.[1] The mere relationship, however, between grantor and grantee creates no just basis for a presumption of fraud.[2] If consideration proceeds from the wife which would, in the ordinary case, suffice to sustain a conveyance as against creditors, the fact of relationship can have little consequence.[3] But it is to be noted that, in these transactions, what constitutes valuable consideration is often determined by principles peculiar to the marital relation, and in such instances the fact does assume significance.

Thus, marriage, it has been declared, constitutes the highest consideration known to the law.[4] Therefore, an antenuptial settlement executed in consideration of marriage, though its moving purpose be to hinder and delay creditors, is upheld universally, as long as the beneficiary was not cognizant of the fraudulent motive.[5] So, also, is the validity of a postnuptial settlement sustained if made in accordance with a written agreement entered into by the parties before marriage.[6] But if such agreement was oral, and failed therefore to comply with the provisions of the Statute of Frauds, the conveyance may be set aside at the instance of creditors.[7] In England, however, a recital of the pre-

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[26] Cooley *v.* The Board of Wardens of the Port of Philadelphia, 12 How. (U. S.) 299 (1851).

[27] Art. 1, Sec. 8. [28] Art. 3, Sec. 2.

[1] See White *v.* Benjamin, 150 N. Y. 258, 44 N. E. 956 (1896); Baumann *v.* Horn, 199 Mo. App. 555, 204 S. W. 53 (1918); Regal, etc. Co. *v.* Gallagher, 188 S. W. (Mo.) 151 (1916); McKey *v.* Emanuel, 263 Ill. 276, 104 N. E. 1051 (1914).

[2] See WILLISTON, CASES ON BANKRUPTCY, 141, note; Ford *v.* Ott, 182 Iowa, 671, 164 N. W. 629 (1917); Lyon *v.* Wallace, 221 Mass. 351, 108 N. E. 351 (1915).

[3] Crenshaw *v.* Halvorsen, 165 N. W. (Iowa) 360 (1917); Nat'l Exch. Bank *v.* Simpson, 78 W. Va. 309, 88 S. E. 1088 (1916); *In re* Jutte's Estate, 230 Pa. 333, 79 Atl. 569 (1911).

[4] Magniac *v.* Thompson, 32 U. S. 348 (1833); Smith *v.* Allen, 5 Allen (Mass.), 454 (1861); Tolman *v.* Ward, 86 Me. 303, 29 Atl. 1081 (1894); American Surety Co. *v.* Conway, 88 N. J. Eq. 370, 102 Atl. 839 (1917).

[5] Barrow *v.* Barrow, 2 Dick. 504 (1774); Clark *v.* McMahon, 170 Mass. 91, 48 N. E. 939 (1898); Robertson *v.* Schlotzhauer, 243 Fed. 324 (1917).

[6] Goring *v.* Nash, 3 Atk. 186 (1744); Metz *v.* Blackburn, 9 Wyo. 481, 65 Pac. 857 (1901).

[7] Warden *v.* Jones, 23 Beav. 487 (1857); Reade *v.* Livingston, 3 Johns. Ch. (N. Y.)